

Moratorium Legal Authority

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The County is a creature of the Legislature and as such it is only those powers that the Legislature by Statute provided.





Wisconsin Courts consistently have interpreted Counties' powers as arising solely from Statutes.

Counties only possess such powers that are conferred upon it by Statute or necessarily implied from Statute.

Spaulding v. Wood County, 218 Wis. Stat. 224, 226 (1935)

Cities, Villages and Towns have the express authority to enact development moratorium.

A County does not have the authority to enact the development moratorium Wis. Stat. § 59.69(4).

A moratorium on the siting of livestock facilities is not a development moratorium.

The prohibition does not limit any authority of a County to impose a moratorium that is not a development moratorium.

The County's power to enact moratoria on the siting of large livestock facilities must be found in a Statute or necessarily implied from a Statute in order for that power to exist.



There is no express language in the Statute that authorizes a County to impose a moratorium in these instances.

Therefore, the power of a County to enact a moratorium must be necessarily implied from Statute.

“Pro Moratorium”

The power to enact a moratorium can be derived from the County’s general power to regulate land use under Wis. Stat. § 59.69, which power is to be liberally interpreted. Wis. Stat. § 59.03(1) and § 59.04.

As long as a temporary freeze on the siting of large livestock facility is related to the public health, safety and welfare, Counties may enact a moratorium ordinance to allow time to study the impacts and to draft or revise existing Ordinances or create new Ordinances related to the siting of livestock operations.

“Con Moratorium”

However, in considering an analysis of whether the County can impose moratorium one must consider the plain language of Wis. Stat. § 93.90 (Livestock Siting Law), whose purpose is to provide uniform regulation of livestock facilities.

While a local authority is not required to regulate large livestock facilities, the Legislature did create narrow exceptions that allow a political subdivision, like a County, to disapprove a livestock facility siting permit.

Such a disapproval must be based upon State standards unless the political subdivision adopts a more restrictive requirement by Ordinance before the applicant files the application for approval and such more stringent requirements are based on reasonable and scientifically defensible findings of fact adopted by the political subdivision.

Mandatory time frames exist in which an application for livestock siting must be processed. A moratorium would halt the processing of applications, which is contradictory to the State Statute.

The Legislature expressly withdrew, with limited exception, the power of political subdivisions to enforce varied and inconsistent livestock facilities siting standards.

Nowhere in the siting law does it suggest that a County may deviate from the processing of any livestock siting application it receives, and therefore because the County is the creature of the Legislature and the County can only do what the Legislature says it can do, the enactment of a moratorium is without valid power.

The law is unsettled.